

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In the Matter of:)	NOTICE OF DETERMINATION
)	
Federal Bureau of Prisons)	
U.S. Department of Justice)	
Respondent)	Docket No. CAA-03-2010-6015
)	
Federal Detention Center Philadelphia)	
700 Arch Street)	
Philadelphia, Pennsylvania 19106)	
Facility)	

NOTICE OF DETERMINATION

Pursuant to the Final Policy Statement, Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 65 Fed. Reg. 19,618 (April 11, 2000) (Self-Disclosure Policy), the U.S. Environmental Protection Agency, Region III (EPA) hereby issues this Notice of Determination (NOD) regarding violations by Federal Detention Center Philadelphia (FDC Philadelphia), a facility owned and operated by the Federal Bureau of Prisons, U.S. Department of Justice, of Section 113 of the Clean Air Act, as amended (CAA), 42 U.S.C. § 7413, and Section 311 of the Clean Water Act, as amended (CWA), 33 U.S.C. § 1321, at the FDC Philadelphia facility located in Philadelphia, Pennsylvania. The violations which are the subject of this NOD were voluntarily disclosed to EPA by FDC Philadelphia by report submitted to EPA on October 20, 2008. This report was submitted to EPA pursuant to the Facility Audit Agreement between the U.S. Department of Justice, Federal Bureau of Prisons (BOP), and EPA, dated March 24, 2007.

I. SELF-DISCLOSURE POLICY

EPA issued the Self-Disclosure Policy to encourage regulated entities to conduct voluntary compliance evaluations and to disclose and promptly correct violations. As an incentive for companies to undertake self-policing, self-disclosure, and self-correction of

violations, EPA may substantially reduce or eliminate gravity-based civil penalties for certain self-disclosed violations, however, EPA retains its discretion to recover any economic benefit gained as a result of noncompliance. Where the disclosing party establishes that it satisfies the following conditions, as set forth in the Self-Disclosure Policy, EPA will not seek gravity-based penalties for violations of the federal environmental requirements: (1) discovery of the violation(s) through an environmental audit or compliance management system; (2) voluntary discovery; (3) prompt disclosure; (4) discovery and disclosure independent of government or third-party plaintiff; (5) correction and remediation; (6) prevent recurrence; (7) no repeat violations; (8) other violations excluded; and (9) cooperation.

Pursuant to the Self-Disclosure Policy, EPA may reduce gravity-based penalties up to 100 percent, if the disclosing entity satisfies all of the conditions described above. EPA may reduce gravity-based penalties up to 75 percent, if the disclosing entity satisfies conditions (2) - (9), above. However, EPA reserves the right to assess a civil penalty with regard to any economic benefit that may have been realized as a result of such violations, even in those instances when the disclosing entity has met all the conditions of the Self-Disclosure Policy. In its enforcement discretion, EPA may waive a civil penalty with regard to the economic benefit arising from such violations if EPA determines that such economic benefit is insignificant. Penalty reductions are not available under the Self-Disclosure Policy for violations that result in serious actual harm or may present an imminent and substantial endangerment to public health or the environment, nor are such reductions available for violations of any order or consent agreement.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. In the report provided to EPA on October 20, 2008, FDC Philadelphia disclosed the violations listed below.

Violation 1: FDC Philadelphia violated the Commonwealth of Pennsylvania State Implementation (Pennsylvania SIP), which is codified at 40 C.F.R. Part 52, Subpart NN, §52.2020 *et seq.* The Pennsylvania SIP includes Section 3-103 in Title 3 of the Philadelphia Code (Air Management Code) which provides that any person who violates any provision of the Air Management Code, any regulation adopted thereunder, any order of Philadelphia's Air Management Services (AMS), or any condition of any required permit or license shall be subject to sanctions, in addition to any other sanction or remedial procedure imposed by the Statutes of the Commonwealth of Pennsylvania or Acts of the United States Government. At the time of the self-audit, FDC Philadelphia had been issued a Natural Minor Operating permit (N05-012) by the City of Philadelphia for the operation of boilers. This permit required that whenever a permit condition could not be met a verbal call be made to the permitting agency, with a written follow up within two days. Although a verbal report had been made to the permitting agency at the time that a recording unit malfunction, no written follow up was made.

Violation 2: FDC Philadelphia was an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2 and a “non-transportation” facility within the meaning of 40 C.F.R. § 112.2, Appendix A thereto, and 36 Fed. Reg. 24,080 (1971), engaged in storing or consuming oil or oil products, which, due to its location, could reasonably be expected to discharge oil in harmful quantities within the meaning of 40 C.F.R. Part 110. FDC Philadelphia had an Integrated Contingency Plan which contained some, but not all, of the requirements for a Spill Prevention, Control and Countermeasure (SPCC) Plan as required by 40 C.F.R. § 112.3. Moreover, FDC Philadelphia did not fully implement all of the elements of its Integrated Contingency Plan.

2. Based on the information provided by FDC Philadelphia, EPA has determined that FDC Philadelphia has met each of the following conditions set forth in the Self-Disclosure Policy, as explained below.

(a) FDC Philadelphia has stated that the violations were discovered through an environmental audit which was part of FDC Philadelphia’s environmental management system.

(b) FDC Philadelphia has stated that the violations were identified voluntarily, not through a monitoring, sampling or auditing procedure required by statute, regulation, permit, judicial order, administrative order, consent decree or consent agreement.

(c) The violations were promptly disclosed to EPA in writing by FDC Philadelphia.

(d) FDC Philadelphia has stated that the violations were identified and disclosed prior to the commencement of a federal, state, or local agency inspection, investigation, or information request, notice of a citizen suit, legal complaint by a third party, report by a “whistleblower” employee or imminent discovery by a regulatory agency.

(e) FDC Philadelphia has described the steps the facility has taken to correct the violations.

(f) FDC Philadelphia has stated that the potential violations are not repeat violations from any prior self-disclosure or enforcement action within the past three years.

(g) FDC Philadelphia has stated that the potential violations did not (1) result in serious actual harm, or present an imminent and substantial endangerment to human health or the environment, or (2) violate the specific terms of any judicial or administrative order or consent agreement.

(h) FDC Philadelphia has cooperated with EPA and provided the information necessary for the Agency to determine the applicability of the Self-Disclosure Policy to its disclosure.

III. DETERMINATION

Pursuant to the Self-Disclosure Policy, and based on information provided by FDC Philadelphia, EPA makes the following determination concerning each of the violations identified above:

1. FDC Philadelphia's failure to comply with the above listed regulations has resulted in violations of Section 113 of the CAA, 42 U.S.C. § 7413, and Section 311(j) of the CWA, 33 U.S.C. § 1321(j), at the FDC Philadelphia facility located in Philadelphia, Pennsylvania.
2. The authority to seek civil penalties for the violations recited herein is found at Section 113(d) of the CAA, 42 U.S.C. § 7413(d).
3. Pursuant to the Debt Collection Improvement Act of 1996, (DCIA) and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (Penalty Inflation Rule), violations of Sections 113 and 608 of the CAA, 42 U.S.C. §§ 7413 and 7671g, which occurred subsequent to January 30, 1997, and through March 15, 2004, are subject to a statutory maximum penalty of \$27,500.00 for each day during which a violation occurred. Violations of the above-cited statutes which occurred after March 15, 2004, and through January 12, 2009, are subject to a statutory maximum penalty of \$32,500 for each day during which a violation occurs.
4. EPA has calculated the gravity-based penalty for the disclosed violations based upon the *Clean Air Act Stationary Source Civil Penalty Policy*, dated October 25, 1991, and in light of the information available to EPA at this time, the total gravity-based civil penalty for the disclosed violations described herein would be twelve thousand eight hundred ninety five dollars (\$12,895.00).
5. Based upon the information provided by FDC Philadelphia and EPA's consideration of the aforementioned policy, FDC Philadelphia has met all of the conditions of the Self-Disclosure Policy and qualifies for a 100 percent reduction in the gravity-based component of the civil penalty for the disclosed violations. No significant economic benefit of non-compliance has accrued to FDC Philadelphia concerning the violations described herein. Therefore, EPA will not assess a gravity-based civil penalty against FDC Philadelphia concerning the aforementioned violations, nor will the Agency assess a penalty concerning any economic benefit of noncompliance which has accrued to FDC Philadelphia.

IV. RESERVATION OF RIGHTS

1. This NOD resolves only the potential claims for civil penalties pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), for the violations alleged herein and as specifically

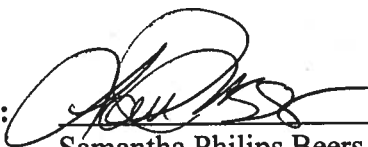
described in the report submitted on behalf of FDC Philadelphia on October 20, 2008. Nothing in this NOD is intended, nor shall be construed, to operate in any way to resolve criminal liability, if any, of FDC Philadelphia. EPA reserves the right to require compliance, corrective action, and/or other remedial measures in connection with any violations, including those alleged herein, of all federal environmental law.

2. This NOD shall not relieve FDC Philadelphia of its obligation to comply with all applicable provisions of federal, state, and local law, nor shall it be construed to be a ruling on, or determination of, any issues relating to any federal, state, or local permit. Nor does this NOD constitute a waiver, suspension, or modification of the requirements of the CAA, CWA, or any regulations promulgated thereunder.
3. EPA reserves the right to undertake any action against any person, including FDC Philadelphia, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, welfare or the environment.
4. EPA reserves the right to revoke this NOD and thereby, render such Notice of Determination null and void if and to the extent that any information or certification provided by FDC Philadelphia, upon which any civil penalty mitigation granted herein for such violation was based was materially false or inaccurate at the time such information or certification was provided to EPA. In such event, EPA reserves the right to assess and collect any civil penalties for any violation described herein. Such revocation shall be in writing and shall become effective upon receipt by FDC Philadelphia.

In issuing this NOD, EPA seeks to promote self-auditing by FDC Philadelphia and expects FDC Philadelphia to be in full compliance with regulatory requirements and to continue the internal procedures necessary to prevent recurrences of violations of environmental requirements.

**Under the Authority of the
U.S. Environmental Protection Agency, Region III**

Date: 12/22/09

By: 
Samantha Philips Beers, Director
Office of Enforcement, Compliance and
Environmental Justice